

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

NOTE: Under P.L.204-2001, SECTION 69, the name of the Indiana Alcoholic Beverage Commission is changed to Alcohol and Tobacco Commission, effective July 1, 2001.

LSA Document #03-38

PROPOSED RULE

OVERVIEW: Adds 905 IAC 1-5.2-9.1 concerning the amount of product a wholesaler or primary source of supply may furnish to a retailer or dealer who has not previously purchased such product from such wholesaler or primary source of supply. Adds 905 IAC 1-5.2-9.2 which governs the activities of a retailer, wholesaler and supplier in the case of a consumer sampling of wine, liquor or cordials in accordance with the Indiana Code. Repeals 905 IAC 1-5.2-9. Effective thirty (30) days after filing with the secretary of state.

905 IAC 1-5.2-9.1 Samples – Wholesale to Retail

SECTION 1. **905 IAC 1-5.2-9.1** is hereby added to the Indiana Administrative Code as a **NEW** section to read as follows:

905 IAC 1-5.2-9.1 Samples – Wholesale to Retail

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22

Affected: IC 7.1-3-9-11; IC 7.1-3-10-13; IC 7.1-3-14-7; IC 7.1-5

Sec 9.1 (a) A primary source of supply or wholesaler may furnish, or give a sample of, alcoholic beverages to a retailer or dealer who has not previously purchased the brand from that primary source of supply or wholesaler *for a period of one (1) year*. For each retail establishment, the primary source of supply or wholesaler may not give more than:

(1) three (3) gallons of any brand of beer;

(2) three hundred seventy-five (375) milliliters of any brand of liquor;

and

(3) three (3) liters of any brand of wine.

(b) If a particular product is not available in a size within the quantity limitations of this section, a primary source of supply or wholesaler may furnish to a retailer or dealer another single container size.

(Indiana Alcohol and Tobacco Commission, 905 IAC 1-5.2-9.1)

SECTION 2. **905 IAC 1-5.2-9.2** is hereby added to the Indiana Administrative Code as a **NEW** section to read as follows:

905 IAC 1-5.2-9.2 Samples – Consumer Product Sampling

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22

Affected: IC 7.1-3-9-11; IC 7.1-3-10-13; IC 7.1-3-14-7; IC 7.1-5

905 IAC 1-5.2-9.2 Consumer Product Sampling

Sec. 9.2 A liquor dealer who is the proprietor of a package liquor store, a liquor retailer, or a wine retailer may offer a product sampling authorized under IC 7.1-3-9-11, IC 7.1-3-10-13, or IC 7.1-3-14-7, in accordance with the following:

- (1) Product that is to be used for a consumer product sampling may be provided by a primary source of supply or wholesaler to an authorized liquor dealer, liquor retailer, or wine retailer, but must be offered to all authorized liquor dealers, liquor retailers, and wine retailers in a nondiscriminatory manner. Samples provided to the liquor dealer, liquor retailer, or wine retailer must be properly invoiced by the authorized wholesaler and the invoice shall clearly show the product being used for consumer product sampling. A primary source of supply or wholesaler may only provide products to a liquor dealer who is the proprietor of a liquor store, a liquor retailer or a wine retailer that are lawful for the liquor dealer, liquor retailer or wine retailer to ordinarily sell under their scope of permit.
- (2) In addition to product that is provided in accordance with subdivision (1), an authorized liquor dealer, liquor retailer or wine retailer may purchase product to be used for consumer sampling from an authorized wholesaler.
- (3) A sampling described in this subsection may only be conducted by licensed employees of the liquor dealer, liquor retailer, wine retailer, wholesaler, primary source of supply, or a company engaged by a primary source of supply, or wholesaler whose primary business is to conduct sampling or tasting promotions on the permit premises and during the normal business hours of the liquor dealer, liquor retailer, or wine retailer.
- (4) The following limitations apply to the number of samples a customer may sample and the size of samples provided to a customer by a liquor dealer, liquor retailer, or wine retailer:
 - (A) A liquor retailer or a liquor dealer who is the proprietor of a package liquor store may offer a combined total not to exceed two (2) samples of liquor, liqueurs, pre-mixed cocktails, or cordials per customer in a day. A liqueur, pre-mixed cocktail or cordial sample may not exceed one-half (0.5) ounce and a sample of liquor may not exceed four-tenths (0.4) ounce.
 - (B) A liquor retailer, a liquor dealer, or a wine retailer may offer wine samples not to exceed one (1) ounce.

(C) Any samples provided by a liquor dealer, liquor retailer, or wine retailer to a consumer must be provided in a nondiscriminatory manner.

(5) A liquor dealer, liquor retailer, or wine retailer may not charge a fee to a consumer for a sample.

(6) If a liquor dealer, liquor retailer, or wine retailer modifies their existing floor plan to provide for the sampling, then amended floor plans must be submitted to and approved by the Indiana State Excise Police.

(7) For a consumer product sampling described in this section, a primary source of supply or wholesaler may not give a liquor retailer, wine retailer or a liquor dealer who is the proprietor of a package liquor store an aggregate amount of more than nine (9) liters of wine, of which no more than three (3) liters may be the same product, or two and twenty five hundredths (2.25) liters of liquor, liqueurs, premixed cocktails or cordials *per sampling event*.

(Indiana Alcohol and Tobacco Commission, 905 IAC 1-5.2-9.2)

SECTION 3. 905 IAC 1-5.2-9 IS REPEALED.

Notice Of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on the 9th day of June, 2003, at 10:00 a.m., at the Indiana Alcohol and Tobacco Commission, E114 Indiana Government Center South, 302 West Washington Street, Indianapolis, Indiana 46204, the Indiana Alcohol and Tobacco Commission will hold a public hearing on proposed retail and consumer sampling rules. Copies of these rules are now on file at the office of the Commission at E114 Indiana Government Center South, 302 West Washington Street, Indianapolis, Indiana 46204, and at the Administrative Code and Register Division of the Legislative Services Agency, 1 North Capitol, Suite 325, Indianapolis, Indiana 46204, and are available for public inspection.

Mary L. DePrez, Chairperson
Indiana Alcohol and Tobacco Commission